

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EUGENE GROOMS)	
Claimant)	
VS.)	
)	Docket No. 219,360
RESIDENCE INN)	
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent, Residence Inn, and its insurance carrier, St. Paul Fire & Marine Insurance Co., appeal from an Order entered by Administrative Law Judge Bryce D. Benedict. The Order, dated July 24, 1997, granted claimant's request for temporary total disability benefits and medical treatment.

ISSUES

On appeal respondent challenges the finding that claimant suffered accidental injury arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments by the parties, the Appeals Board concludes that the Order of the Administrative Law Judge should be affirmed.

Claimant contends that he injured his low back on September 27, 1996, and is now in need of additional medical treatment and temporary total disability benefits. Respondent contends the current medical condition results from an earlier work-related injury and claim

which claimant settled. Respondent points out that claimant has had two prior workers compensation claims for injury to his low back. The second injury, which occurred on January 1, 1995, was settled in November 1995. Dr. Bernhardt had recommended at that time that claimant undergo a repeat fusion. Claimant declined the surgery and settled the claim. As a part of the settlement, he waived his right to future medical benefits. Respondent points out that the surgery now recommended is the same recommended before the settlement of the earlier claim and argues that claimant has suffered no new or additional injury.

The Appeals Board finds claimant has suffered a new and additional injury. The Board so finds in part on the basis of claimant's testimony. Claimant testified that on September 27, 1996, he was asked to move a desk. He was in the process of carrying it up several flights of stairs when he experienced a bee sting like pain in his low back. According to the claimant, his low back condition was much worse following this accident than it had been from the earlier injuries. The Appeals Board also relies in part on the report of Dr. Amundson. His report of May 8, 1997, states "I do feel that this is clearly an aggravation of his pre-existing condition."

The Appeals Board acknowledges significant evidence to the contrary but finds that the evidence establishes more probably than not that claimant did suffer an aggravation of a pre-existing condition which constituted a new compensable injury. For that reason the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Bryce D. Benedict, dated July 24, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: George H. Pearson, Topeka, KS
Ronald J. Laskowski, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director